

While Applicants disagree that restriction between the pending claims is appropriate, to be fully responsive, Applicants elect, with traverse, to prosecute Group II, claims 12-29. Further, while claim 33 was not addressed in the Restriction Requirement of October 4, 2006, Applicants respectfully request that claim 33 be included in Group II, and thereby Applicants' election, as claim 33 is directed to a method of increasing oral bioavailability.

Applicants traverse on the ground that the claims would not be unduly burdensome to search as written. See M.P.E.P. § 803. "[A] serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation of separate classification," among other things. *Id.* Here, the Examiner has not shown any separate classification; Groups I-IV are classified in class 514, subclass 326. Rather, the Examiner identifies what will be the focus of her search for each group, as follows:

Group I--tizanidine with food;

Group II--increased absorption/oral bioavailability of tizanidine;

Group III--increasing the effective therapy of patients receiving tizanidine via information included with the tablet; and

Group IV--manufacture of a labeled container that includes tizanidine and instructions for administration.

Applicants respectfully point out to the Examiner the extensive overlap of subject matter between the claims. Indeed, a proper search of the Group II claims would necessarily include a search of the Group I and III-IV claims, and vice versa. For instance, at least independent claims 1, 7, 12, 17, and 30-39 require a tablet formulation

of tizanidine that is taken or to be taken with food. Yet, as stated above, the Examiner has indicated that the search for tizanidine with food would only be useful for ascertaining the patentability of Group I. Similarly, while the issue of increased absorption/oral bioavailability reaches across these claims, the Examiner has indicated that the search of this particular subject matter would only apply to Group II. Clearly, the search and examination of Group II, while patentably distinct from the other Groups, should, nevertheless, include and thus, overlap a search for the subject matter of the other groups. Accordingly, Applicants submit that a serious burden to examine all the groups together does not exist.


Thus, in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office, Applicants respectfully request that the restriction requirement between Groups I, II, III, and IV be withdrawn.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 5, 2007

By: 
William L. Strauss
Reg. No. 47,114